

Uniform Civil Code

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INTRODUCTION

A uniform civil code will signify a set of common personal laws for all citizens. The nation has a complicated legal structure that consists of several personal laws that regulate various areas of people's lives, including marriage, divorce, inheritance, and adoption¹. The concept of a UCC has been considered for many years in India, and its proponents contend that it will foster racial harmony, streamline the legal system, and guarantee gender justice. It is a hotly debated topic that involves issues with respect to constitutional restrictions, cultural diversity, and individual rights. The controversy surrounding the UCC in India serves as a good example of the difficulties in integrating the various cultural and religious traditions with the demands of equality and justice in modern society. A UCC for Indian citizens is mandated by the Constitution in Article 44, although no steps have been taken in this direction yet. It still hasn't been put into practice because it was included in the Directive Principles, which are only unenforceable instructions, and cases involving paper protection aren't a good enough reason to petition the court of Law.²

WHY IN THE NEWS?

Indians have been debating the Uniform Civil Code (UCC) for a number of years, and various developments relating to it have caused it to occasionally appear in the news. Since the Law Commission of India published a report in 2021 urging the government to implement a UCC, the topic of a UCC recently attracted attention once more. Another reason why the UCC is often in the news is because of the court cases related to personal laws that are currently being heard in various courts in the country. A PIL postulate on uniform adoption, guardianship laws, and succession was heard by the SC on January 29, 2021. On 16th

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¹ Drishti IAS, "Uniform Civil Code: Balancing Tradition and Modernity" (*Drishti IAS* December 31, 2022) <<https://www.drishtias.com/daily-updates/daily-news-editorials/uniform-civil-code-balancing-tradition-and-modernity>> accessed February 20, 2023.

² <https://www.business-standard.com/about/what-is-uniform-civil-code>

December 2020, the SC hesitantly heard two PILs call for uniform divorce law and uniformity in the grant of maintenance and alimony to women.³

These cases often raise questions about the need for a UCC, and they keep the debate about the issue alive in the public discourse. Moreover, the topic of UCC often becomes a political issue, with political parties taking different positions on the issue depending on their political ideologies and vote-bank considerations. Political parties in power often face pressure from various groups and communities when making decisions related to the UCC, and this can result in public debates and media coverage. Overall, the Uniform Civil Code remains an utterly controversial and debated issue in India, and its frequent appearance in the news reflects the ongoing public and political discourse around the topic.⁴

BACKGROUND OF UCC

The UCC first appeared in a British government paper from 1835 that emphasized the requirement for consistency in the coding of Indian law with regard to crimes, evidence, and contracts and particularly suggested that personal laws of Hindus and Muslims be kept outside of such codification.⁵ *Deshmukh bill*, commonly known as *Hindu Women's Right to Property Act of 1937*, led to the creation of the *B. N. Rau committee, in 1941*. They had the responsibility of figuring out whether general Hindu rules were required. They came to the conclusion that the time had come for a uniform civil code however their primary goal was to modernize Hindu law in accordance with the scriptures, which would offer equal rights to women in accordance with current societal trends.⁶ *The Special Marriage Act of 1872*, provided Indian residents the option of a civil union. Since it needed people concerned only willing to give up their faith it was only applicable in a limited way. Sikhs, Jains, Buddhists, and Hindus were able to get married either in accordance with their individual laws or in accordance with the later *Special Marriage (Amendment) Act, 1923*, without having to

³ Dhananjay Mahapatra / TNN / Jan 7 2023, "Can Supreme Court Ask Parliament to Enact Law for UCC? Top Court to Decide: India News - Times of India" (*The Times of India*) <<https://timesofindia.indiatimes.com/india/can-supreme-court-ask-parliament-to-enact-law-for-ucc-top-court-to-decide/articleshow/96800996.cms>> accessed February 20, 2023

⁴ "All Parties Should Make Collective Effort to Implement Uniform Civil Code, Says Gadkari" (*The Economic Times*) <<https://economictimes.indiatimes.com/news/politics-and-nation/all-parties-should-make-collective-effort-to-implement-uniform-civil-code-says-gadkari/articleshow/96116576.cms>> accessed February 20, 2023

⁵ "Uniform Civil Code: A Detailed Analysis - Pen Acclaims" <<http://www.penacclaims.com/wp-content/uploads/2020/09/Tanya-Sharma.pdf>> accessed February 20, 2023

⁶ Drishti IAS, "Uniform Civil Code" (*Drishti IAS* October 20, 2022) <<https://www.drishtias.com/daily-updates/daily-news-analysis/uniform-civil-code-9>> accessed February 20, 2023

renounce their faith or give up their right to inherit, and they were also allowed to keep their succession rights.⁷

POST-COLONIAL PERIOD (1947-1985)

A uniform civil code was a demand made during the constitution's development by prominent personalities like Jawaharlal Nehru and Dr. B.R. Ambedkar. However, because of the opposition of religious conservatives and a widespread absence of awareness at the moment, they decided to incorporate the UCC in the Directive Principles of State Policy (Article 44).⁸

There were several reforms at this time including:

The Hindu code bill- Dr. B. R. Ambedkar designed the legislation to modernize Hindu law, that prohibited polygamy, legalized divorce, and granted daughters inheritance rights. Despite fierce opposition, a watered-down version of the legislation was enacted through four separate statutes.⁹

Succession Act- Daughters were not originally granted inheritance rights in inherited property according to the ***Hindu Succession Act of 1956*** They could only ask for a right to eat from one Hindu family. Yet on September 9, 2005, the Act was amended to eliminate this difference.¹⁰

The Hindu Marriage Act

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Minority and Guardianship Act

Adoptions and Maintenance Act

⁷ Menski W, "The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda: German Law Journal" (*Cambridge Core* March 6, 2019) <<https://www.cambridge.org/core/journals/german-law-journal/article/uniform-civil-code-debate-in-indian-law-new-developments-and-changing-agenda/7C713AF95B16AF5CD2F39ADBBD868951>> accessed February 20, 2023

⁸ "Ambedkar and the Uniform Civil Code" (*outlookindia*, February 3, 2022) <<https://www.outlookindia.com/website/story/ambekar-and-the-uniform-civil-code/221068>> accessed February 23, 2023

⁹ "Nehru and the Hindu Code Bill" (*outlookindia*, February 3, 2022) <<https://www.outlookindia.com/website/story/nehru-and-the-hindu-code-bill/221000>> accessed February 23, 2023

¹⁰ Ijalr, "Women's Property Rights under Hindu Law" (*ijalr* August 20, 2020) <<https://ijalr.in/womens-property-rights-under-hindu-law/>> accessed February 23, 2023

Special Marriage Act:- It was passed in 1954 and allowed for civil unions devoid of any personal religious laws.

JUDICIAL INTERVENTIONS

Shah Bano case (1985):-

Shah Bano, was denied alimony after her husband divorced them through the triple talaq method, which involves pronouncing "I divorce thee" three times. She made a court appearance, and both the District Court and the Supreme Court found her in her favor. As a result, her husband filed an appeal with the Supreme Court, claiming that he had completed all of his duties under Islamic law. In 1985, the Supreme Court upheld her claim under the All India Criminal Code's "maintenance of spouses, children, and parents" provision (Section 125), which was applicable to all residents regardless of religion. It also recommended the creation of a uniform civil code.

Information about the case

- According to Muslim personal law, maintenance was only obliged to be paid up until the moment of iddat. (about 90 days, or three lunar months).
- According to Section 125 of the Criminal Procedure Code (CrPC), which is applicable to all citizens, the wife was entitled to maintenance.

Effect - Following this landmark ruling, there were protests, gatherings, and discussions around the country. In response to the demand, the then government not approved the Muslim Women's (Right to Protection on Divorce) Act (MWA), which made Section 125 of the Criminal Process Code inapplicable to Muslim women.¹¹

Daniel Latifi Case:-

On the basis that it violated both Article 21's right to life and Articles 14 and 15's right to equality, the Muslim Women's Act (MWA) was challenged. The Supreme Court found that a wife's iddat payment must be adequate to sustain her both now and in the future, upholding the validity of the provision and harmonizing it with section 125 of the Criminal Procedure

¹¹ Score G, "Shah Bano Judgment and Uniform Civil Code in India" (*GS SCORE*) <<https://iascore.in/topical-analysis/shah-bano-judgment-and-uniform-civil-code-in-india>> accessed February 23, 2023

Code. According to local law, a Muslim woman who has been divorced has a right to assistance for the rest of her life or until she marries again.¹²

Sarla Mudgal Case:-

In this instance, the question was whether a Hindu spouse who had been married under Hindu law would be able to also accept Islam and thereby arrange a second wedding. The court came to the conclusion that the Hindu marriage could only be annulled in accordance with Hindu law on one of the grounds listed in the Hindu Marriage Act of 1955. Section 494 of the Indian Criminal Code (IPC) prohibits second marriages that are planned after a person converts to Islam since it does not instantly void the first marriage.¹³

John Vallamattom Case:-

In this instance, John Vallamattom, a priest from Kerala questioned whether Section 118 of the **Indian Succession Act**, which applies to non-Hindus in India, is constitutionally lawful. Mr. Vallamattom argued that Section 118 of the Act unfairly targets Christians by establishing onerous restrictions on their capacity to donate to charities or use their property for religious reasons. The bench ruled the provision unconstitutional and illegal.¹⁴

NEED FOR UNIFORM CIVIL CODE

Promoting equality:- Nowadays, distinct personal laws apply to different communities in India. like *Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956 & Hindu Minority & Guardianship Act (1956)*. Christians, Parsis, and Muslims are all subject to their own set of laws. Uniform Civil Code will help to make personal laws more comprehensible, clear, and concise.¹⁵

For the purpose of national integration:- A uniform civil code will ensure equality by doing so, harmony in society by separating religion from social interactions and personal

¹² Ram O, "Danial Latifi vs. Union of India Case Summary 2001 SC" (*Law Planet - Legal News, Law Updates & Law Exams Preparation* April 20, 2022) <<https://lawplanet.in/danial-latifi-vs-union-of-india-case/#:~:text=In%20Danial%20Latifi%20vs.,even%20beyond%20the%20customary%20period.>> accessed February 23, 2023

¹³ LawFoyer, "Smt. Sarla Mudgal, President, ... Vs Union of India & Ors." (*LawFoyer* August 2, 2022) <<https://lawfoyer.in/smt-sarla-mudgal-president-vs-union-of-india-ors/>> accessed February 23, 2023

¹⁴ "John Vallamattom and Anr vs Union of India on 21 July, 2003 - Indian Kanoon" <<https://indiankanoon.org/doc/168292393/>> accessed February 22, 2023

¹⁵ Rylander J, "The Need for UCC: Uniform Civil Code in India" (*PA TIMES Online* June 3, 2022) <<https://patimes.org/the-need-for-ucc-uniform-civil-code-in-india/>> accessed February 22, 2023

regulations. "Uniform civil code will promote the cause of national unification by eradicating divergent loyalties to the law which have competing philosophies," **the Supreme Court stated in *Mohd. Ahmed Khan v. Shah Bano Begum (1985)*.**¹⁶

Gender Equity:- By eliminating the discriminatory clauses that are already present in personal laws, UCC would advance gender justice.

- The Hindu Mitakshara branch of law logically prohibited a Hindu girl from inheriting by birth from the joint family estate. because she only had a temporary role in the paternal household after getting married and joining her husband's family.
- According to Islamic law, a man is often entitled to twice as much inheritance as a woman who has the same degree of relationship with the decedent. According to Islamic law, the father is the only guardian of his minor child's person and property.¹⁷

Choice-Making Ability:- In the event of inter-caste and inter-religious weddings, couples would be protected by law that is neutral towards religion. Any citizen may get married in a civil ceremony outside the purview of any particular faith or personal law according to laws like **the Special Marriage Act of 1954.**¹⁸

ISSUES AND DIFFICULTIES WITH THE UNIFORM CIVIL CODE

legal diversity in civil laws exists:- Most civil cases under Indian law are governed by a unified code known as the ***Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Evidence Act, Partnership Act, Transfer of Property Act, etc.*** States have made countless adjustments, so even under these secular civil rules, there is a difference in some areas.¹⁹

Constitutional issues:-The right to equality and the freedom of religion clash.

- The basic right to practice one's faith is outlined in Article 25.

¹⁶ Service SN, "Why India Needs a Uniform Civil Code" (*The Statesman* September 10, 2020) <<https://www.thestatesman.com/supplements/law/india-needs-uniform-civil-code-1502922940.html>> accessed February 23, 2023

¹⁷ "Uniform Civil Code, Identity Politics and the Gender Equality" (*Civildaily* January 31, 2023) <<https://www.civildaily.com/news/uniform-civil-code-3/>> accessed February 23, 2023

¹⁸ "Special Marriage Act as a Precursor of Uniform Civil Code" (*Legal Service India - Law, Lawyers and Legal Resources*) <<https://www.legalserviceindia.com/legal/article-6332-special-marriage-act-as-a-precursor-of-uniform-civil-code.html>> accessed February 23, 2023

¹⁹ Doneria T, Authors/Editors and Admin LL, "Uniform Civil Code: Advantages and Challenges" (*The Legal Lock*) <<https://thelegallock.com/uniform-civil-code-advantages-challenges-and-debate>> accessed February 23, 2023

- Any religious group's or any section's right to freedom of religion is upheld under Article 26(b) it "conducts its own affairs in areas of religion".
- According to Article 29, people have the right to preserve unique cultures.
- These rights contradict articles 14 and 15 guarantees of equality before the law.²⁰

Diversity and plurality: It has been suggested that UCC poses a challenge to a multi-religious culture like India where people have faith in their individual religious teachings or beliefs. The Uniform Civil Code is "not required nor desirable at this point" in India, as reported by the Law Commission of India in the 2018 assessment. According to the Commission, secularism cannot conflict with the nation's strong tradition of diversity.²¹

Political and social issues

- Minorities worry that they are being forced to adopt the majority culture in the interest of homogeneity.
- It will be quite difficult to bring uniformity among all of these individuals given the immense cultural diversity in India.²²

The problem in Drafting the UCC: Aside from reaching a consensus, drafting the UCC presents one of the largest challenges to its implementation. If the Uniform Civil Code is a compilation of all personal laws or a fresh, common law that upholds the constitution's requirement, there is no guiding principle or vision document.

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CONCLUSION

In conclusion, there is still much disagreement over whether India should adopt a uniform civil code. Some claim that it would advance social justice and gender equality, while others claim that it would contravene people's right to freedom of religion and cultural variety. The

²⁰India legal S (*Constitutional perspective of Uniform Civil Code*)

<<https://www.legalservicesindia.com/article/2367/Constitutional-perspective-of-uniform-civil-code.html>> accessed February 23, 2023

²¹ Rajagopal K, "Uniform Civil Code Neither Desirable nor Necessary at This Stage, Says Law Commission" (*Uniform civil code neither desirable nor necessary at this stage, says Law Commission - The Hindu* November 28, 2021) <<https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article61498390.ece>> accessed February 23, 2023

²² "Politics around the Uniform Civil Code" (*Return to frontpage* August 1, 2021)

<<https://frontline.thehindu.com/cover-story/politics-around-the-uniform-civil-code-ahead-of-uttar-pradesh-assembly-elections-2022/article35509266.ece>> accessed February 23, 2023

Indian government and society would have the last word about the adoption of a UCC and how it should be implemented.

